



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, January 26, 2006, 7:30 p.m.
777 B Street, Hayward, CA 94541**

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chair Thnay followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS: Lavelle, Sacks, McKillop, Bogue, Peixoto, Zermeno
CHAIRPERSON: Thnay
Absent: COMMISSIONER: None

Staff Members Present: Conneely, Patenaude, Pearson, Lens

General Public Present: Approximately 6

PUBLIC COMMENTS

There were no public comments.

PUBLIC HEARINGS

1. Site Plan Review Application No. PL-2005-0522 and Variance Application No. PL-2005-0488 – Hossien Mehrizi (Applicant/Owner) - Request to Build Additions to Two Residential Units and Maintain a 12-Foot-Wide Driveway for Five Units where a 20-Foot-Wide Driveway is Required – The Project is Located at 24073 through 24103 Silva Avenue

Staff report submitted by Associate Planner Pearson, dated January 26, 2006, was filed.

Associate Planner Pearson presented the staff report indicating that he received a public comment from a former member of the Jackson Triangle Neighborhood Plan Task Force who indicated support of the staff's position. He responded to questions from Commissioners.

Chair Thnay opened the public hearing at 7:39 p.m.

Applicant Mr. Mehrizi indicated that he wants to build additions to his property because there is enough land and because he wants to improve his property. He indicated that most of the driveways on Silva Avenue are 12-foot-wide. He added that there are properties on Sycamore Avenue that have non-conforming uses and do not present an unattractive nuisance. He mentioned that since he met with staff he has spent not only money but time submitting plans and redesigning them. He respectfully asked for a variance.

In response to Commissioner McKillop's question about his response to the staff alternative to the proposal, Mr. Mehrizi mentioned that due to his financing situation with two different lenders that cannot be merged, he can compromise to the alternative.

In response to Commissioner Lavelle, Mr. Mehrizi responded that the property is rental property for five families. He added that the addition is going to create three bedrooms and two bathrooms, which represents an improvement to the property.

Chair Thnay closed the public hearing at 7:49 p.m.

Principal Planner Patenaude addressed the comments presented by the applicant indicating that there are narrow driveways in the neighborhood and that when property owners request improvement applications, it is the City's responsibility to bring them into compliance with the ordinance. He also mentioned that the applicant's narrow driveway creates a dangerous situation.

Discussion and questions ensued regarding the alternative proposed by staff and the procedural requirements involved when applying for a variance and with non-conforming properties. The Commissioners concurred that staff continue to work with the applicant in complying with the ordinance requirements because of the applicant's willingness to improve his property.

After corroborating with Assistant City Attorney Conneely, Commissioner Sacks made a motion to deny the appeal without prejudice so that the applicant can bring back a modified proposal. The motion was seconded by Commissioner Zermeño.

Commissioner Sacks moved, seconded by Commissioner Zermeño, and unanimously approved to accept that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270, Projects Which Are Disapproved; and deny the appeal, upholding the Planning Director's decision to deny the Site Plan Review and Variance, subject to the findings without prejudice.

2. Use Permit Application No. PL-2005-0576 – H&R Block (Applicant) – Hayward Whipple Associates (Owner) - Request to Modify Use Permit No. PL-2003-0153 to Allow Financial Institutions Within a Multi-Tenant Retail Building. The Project is Located at the Northeast Corner of Industrial Parkway Southwest and Whipple Road within the Target Center

Staff report submitted by Principal Planner Patenaude, dated
January 26, 2006, was filed.

Principal Planner Patenaude presented the staff report indicating that he received a call from Circuit City indicating that they would like to amend their uses to allow for a convenience market. He added that he is starting to see an emergence of intentions to amend the list of uses and therefore he recommends upholding to the list of approved uses. He responded to questions from the Commissioners.

Chair Thnay opened the public hearing at 8:20 p.m.

Ms. Giovannetti, Division Project Manager for Real Estate representing H&R Block, and Ms. Gray, District Manager for the area, mentioned that most people see H&R Block as a retail



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service rather than a financial institution. They added that II&R Block is known nation-wide and serves throughout shopping centers bringing a wide range of clientele with 50 years of successful experience. Ms. Gray added that there are five locations in Hayward and that the proposed location within the Target Center needs the service. She added that sites are turned into classrooms that offer classes for tax courses when they are not providing tax preparation services.

In response to Commissioner Sacks, Ms. Gray indicated that H&R Block sites are closed in May, June, and half of July.

In response to Commissioner Lavelle, Ms. Gray mentioned that it is their intent to provide cash refund checks in order to have clients spend the money at the center.

Commissioner McKillop mentioned that the services that H&R Block provides are considered retail services.

In response to Commissioner Zermeño, Ms. Gray indicated that she would be willing to offer a class at the site during the months that they are closed down. Discussion ensued as alternative activities to offer during the months that II&R Block would be closed.

In response to Commissioner Bogue, Ms. Gray mentioned that the location considered is next to T-One Mobile.

Mr. Shaffer, representing the owners of the shopping center, mentioned that the list of approved uses created a gray area for applicants such as the one proposed. He added that he did not think that granting the request would set a precedent to allow for services that are not consistent with the range of services that were initially approved. He mentioned that 7-Eleven and a dentist's applications were turned down in order to uphold to the approved uses.

In response to Chair Thnay, Mr. Shaffer mentioned that there are two vacant spaces and that 75% of the shopping center is leased. He added that in considering a prospective tenant they thought of a more regional type such as H&R Block.

Chair Thnay closed the public hearing at 8:41p.m.

In response to Commissioner Lavelle for the basis for considering II&R Block a financial institution, Principal Planner Patenaude indicated that the materials they claim to provide represent a wide range of financial services such as tax preparation. He added that the months that H&R Block would be closed represent a further reason for objecting to the request.

In response to Commissioner Lavelle, Principal Planner Patenaude indicated that staff would need direction from the Commissioners in order to amend the use list to include tax preparation services after they act on the proposed recommendation.

Commissioner Zermeño spoke in favor of the H&R Block application because of the business that it would generate and the foot traffic that it would attract. He also mentioned that this would represent a competition to the services provided at Union Landing.

Commissioner Bogue indicated that he did not believe that the proposed use is appropriate for the Zoning District and stated that the type of use proposed was not specifically exempted from the uses that were approved by Planning Commission and the suggestion by the City Council Commercial Center Improvement. Commissioner Bogue made a motion to deny the request for a modification to the permit. He also mentioned that it would be a detriment to the integrity of the Planned Zoning District and added that Union Landing has similar restrictions on regional and sub-regional uses.

Commissioner Sacks seconded the motion.

Commissioner McKillop disagreed with the motion indicating that the proposed request is retail service rather than financial. She added that she could not think of any regional or sub-regional use that could go into the 1,000 square-foot space that H&R Block is considering.

Commissioner Sacks disagreed that the proposed request is a retail service because there is no product that is taken back after services are rendered. She mentioned that she has used the proposed services and was pleased; however, she mentioned that the prospects of H&R Block as currently constituted and the location will represent a problem when they have to be closed. She added that the training institution aspect of it is not something that was bargained when the standards were first instituted. She thanked the applicant.

Commissioner Lavelle thanked the comments made by H&R Block representatives. She did not support the motion and offered a recommendation to specifically add tax preparation use to the list of approved uses. She mentioned reservation for the site being closed for a period of time; however, she indicated that tax preparation services could keep them busy, which would offset the time that they have to be closed. She favored to amend the list to allow for the type of business proposed.

Commissioner Zermeño mentioned concern for the months that the proposed applicant would have to be closed and requested efforts to contact Chabot College to offer tax preparation courses. He indicated that this business would bring foot traffic to Hayward. He did not support the motion.

Chair Thnay appreciated H&R Block interest on Hayward; however, he mentioned issues with foot traffic, which could create accidents. He also had issues with the down time. He expressed support for the motion.

Commissioner Bogue moved, seconded by Commissioner Sacks, and approved to deny the request for a modification to the Conditional Use Permit subject to the findings.



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AYES: COMMISSIONERS Sacks, Bogue, Peixoto
CHAIR Thnay
NOES: COMMISSIONER Lavelle, McKillop, Zermeno
ABSENT: COMMISSIONER None
ABSTAIN: COMMISSIONER None

ADDITIONAL MATTERS

4. Oral Reports on Planning and Zoning Matters
There were no items.

5. Commissioners' Announcements, Referrals
In response to Commissioner Lavelle's inquiry regarding an item for massage application that was scheduled to be heard in December, Principal Planner Patenaude indicated that it is being held awaiting completion of Police Department requirements.

Commissioner Sacks invited everyone to the Literacy Council Fund Raiser for February 13 from 3:00 to 6:00 p.m., at the Main Library.

Commissioner Zermeno commended staff for the work done with abandoned cars on Tennyson Road.

Commissioner Bogue stated that a resident at the Skywest Townhomes informed him that half of the road on Golf Course Road is barricaded, which makes it narrow and difficult to see at night. He asked staff to look into what was intended for the road and to make the place safer.

APPROVAL OF MINUTES

Minutes of December 15, 2005 were approved.

ADJOURNMENT

Chair Thnay adjourned the meeting at 9:00 p.m.

APPROVED:

Marvin Peixoto, Secretary
Planning Commission

ATTEST:

Miriam Lens
Commission Secretary